IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8613 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL HIRJIBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

MR DJ CHAUHAN for Petitioner

MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of order of detention dated 6th July, 2000, with respect to detenu passed by respondent No.1 in exercise of powers conferred

upon him under Sec.3(2) of the Prevention of Antisocial Activities Act, 1985 (In short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order as well as public health. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on one Prohibition Case lodged against the petitioner detenu in Rajkot Taluka Police Station on 2nd July, 2000, and that case is pending for investigation. On the basis of this case only the detaining authority has passed an order of detention on 6th July, 2000, and that order has been challenged in this writ petition.

3. Though Rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Mr.D.J.Chauhan, learned advocate for the petitioner has argued that looking to the grounds of detention, the detaining authority has taken into consideration less drastic remedy which is not available to the detaining authority for passing an order of detention, and therefore, this is a case of total non-application of mind of the detaining authority. He has cited an authority of JAYANTI NENUMEL RAMNANI Vs. COMMISSIONER OF POLICE, RAJKOT, reported in 2000(2) GLH 166, wherein it has been held that the grounds for not taking action against the petitioner under Sec.57(c) which are considered while passing the order of detention are not the grounds, and therefore, looking to the facts of this case, the present case squarely falls within the four corners of aforesaid case cited by Mr.Chauhan. In view of this, the order of detention is bad in law and same is required to be quashed and set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dated 6th July, 2000, passed by respondent No.1 is quashed and set aside. The petitioner-detenu is ordered to be released forthwith, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

syed/